

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,)	
)	
v.)	CR 07-100
)	
EVELYN MICHELLE LEVINER,)	
)	
Defendant.)	

ORDER

CONTI, District Judge

In this memorandum order, the court considers the motion for modification or reduction of sentence pursuant to 18 U.S.C. § 3582(c)(2) filed by defendant Evelyn Michelle Leviner (“defendant”). After considering the submissions of the parties, the court will deny defendant's motion.

Background

On March 21, 2007, defendant was indicted on four counts as follows:

At count one, “did knowingly, intentionally and unlawfully conspire with each other and with persons known and unknown to the grand jury to distribute and possess with intent to distribute 50 grams or more of a mixture and substance containing a detectable amount of cocaine base, in the form commonly known as crack, and five kilograms or more of a mixture and substance containing a detectable amount of cocaine, Schedule II controlled substances, as prohibited by Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(A)(iii) and 841(b)(1)(A)(ii). In violation of Title 21, United States Code, Section 846.” (Docket No. 15).

At count fifteen, “did knowingly, intentionally and unlawfully, possess with intent to distribute 50 grams or more of a mixture and substance containing a detectable amount of cocaine base, in a form commonly known as crack, a Schedule II controlled substance. In violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(A)(iii).” (Id.)

At count twenty, “knowingly, intentionally and unlawfully distributed and possessed with intent to distribute less than 500 grams of a mixture and substance containing a detectable amount of cocaine, a Schedule II controlled substance. In violation of Title 21, United States Code, Sections § 841(a)(1) and 841(b)(1)©.” (Id.)

At count twenty-one, “knowingly, intentionally and unlawfully distributed and possessed with intent to distribute 5 grams or more of a mixture and substance containing a detectable amount of cocaine base, in a form commonly known as crack, a Schedule II controlled substance. In violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(B)(iii).” (Id.)

At her initial appearance before the court, defendant pled not guilty to all charges. On October 3, 2007, defendant changed her not guilty plea to a plea of guilty at counts one, fifteen, twenty and twenty-one of the indictment.

On January 4, 2008, the court held a sentencing hearing. The court determined that defendant’s offense level was 27 and her criminal history category was II. Pursuant to the United States Sentencing Guidelines, defendant was subject to a range of imprisonment of 78 to 97 months, but because the offenses at counts one and fifteen required a statutory mandatory minimum sentence of 120 months, defendant was subject to a minimum sentence of 120 months.

Defendant did not appeal either her conviction or her sentence. On July 28, 2008, defendant filed a motion for modification or reduction of sentence pursuant to 18 U.S.C. § 3582. In her motion, defendant argues that she qualifies for the two-level reduction in her sentence pursuant to 18 U.S.C. § 3582(c)(2).

Discussion

The offenses to which defendant plead guilty at counts one and fifteen are subject to a statutory mandatory minimum sentence of 120 months. 21 U.S.C. § 841(b)(1)(A)(iii). The court sentenced defendant to the statutory mandatory minimum sentences of 120 months to be concurrently served. This court is without the power or authority to reduce defendant's sentence to a sentence which is lower than the statutory mandatory minimum sentence. In no event can the court impose a sentence lower than the statutory minimum sentence of 120 months which was imposed. Accordingly, this court must deny defendant's motion for modification or reduction of sentence.

IT IS HEREBY ORDERED THAT defendant's motion for modification or reduction of sentence is DENIED.

By the court:

/s/ JOY FLOWERS CONTI
Joy Flowers Conti
United States District Judge

DATED: September 23, 2008

cc: counsel of record

Evelyn LeViner 09359068B4

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